

State of New Hampshire Banking Department

In re the Matter of: ) Case No.: 07-068  
)  
State of New Hampshire Banking ) Recommended Decision by the Presiding  
) Officer  
Department, )  
)  
and )  
)  
Debbie A. Knecht )  
)  
Complainant, )  
)  
and )  
)  
Capital Quest Financial Services,  
Inc,  
Respondent

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Recommended Decision

The Complainant had the burden of establishing a prima facie case that a violation of the chapter or an unfair and deceptive trade practice had occurred. For the reasons set forth below I find that she met that burden. For the reasons further set forth below I find the proper amount of restitution to be \$2,198.63.

Procedural Background and Authority

Pursuant to RSA 383:10-d the commissioner shall have exclusive authority and jurisdiction to investigate conduct that is or may be an unfair or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I or that may violate any of the provisions of Titles XXXV and XXXVI and administrative rules adopted thereunder. The Commissioner may hold hearings

1 relative to such conduct and may order restitution for a person or persons  
2 adversely affected by such conduct.

3 On January 3, 2007, the New Hampshire Banking Department ("Department")  
4 received a complaint from Complainant regarding Respondent. On review, the  
5 Commissioner determined that the initial documents submitted contained a  
6 factual discrepancy between the parties, and that a proper determination of  
7 what restitution is due, if any, would best be determined by an  
8 administrative hearing wherein each party would have an opportunity to  
9 present their evidence to an appointed Presiding Officer.

10 I was appointed Presiding Officer. In preparation for the hearing, I  
11 requested a Bank Examiner perform an analysis of the loan file. His analysis  
12 was provided to the parties and formed the basis of his testimony.

13 The Respondent submitted a list of exhibits, now identified as Exhibits  
14 A-G, and consented to having the loan file submitted as Exhibit H once non-  
15 public personal information was redacted.

16 The hearing was convened on May 3, 2007. As stated in the Notice of  
17 Hearing and reiterated at the hearing, the Respondent was charged with  
18 answering the question of whether it had violated a provision of the New  
19 Hampshire Banking Laws or committed an unfair or deceptive trade practice.  
20 If the Presiding Officer determined that such a violation had occurred, then  
21 he must then determine what restitution may be due to the Complainant for the  
22 violation.

#### 23 Findings of Fact, Rulings of Law

24 On the date of hearing there was testimony from the Complainant, Debbie  
25 Knecht; Michael Poulios, a bank examiner; and Sean McGuire and Therese  
Veysey, the President of Respondent and loan officer for the subject loan,  
respectively, on behalf of Respondent.

1 Both parties further submitted memoranda after the hearing. Neither of  
2 these could reasonably be construed as proposed findings of fact or rulings  
3 of law, however, to the extent they were helpful in my analysis of this  
4 cause, I have used them herein.

5 Ms. Knecht's principal complaint concerned the change in payment from  
6 the initial quote to the final product. There was contradictory testimony on  
7 the topic of when she received a Good Faith Estimate (GFE). There was  
8 uncontraverted testimony that the original payment terms were based on  
9 inaccurate estimates of homeowners and flood insurance premiums provided by  
10 the seller of the property. I hereby find as fact that the change in payment  
11 terms was inside the norms experienced by the industry and, therefore, make a  
12 ruling of law that this discrepancy did not constitute an unfair and  
deceptive act or a violation of the Chapter.

13 During the course of this matter, I became aware of a separate issue  
14 regarding the preparation of the initial GFE and a possible violation of the  
15 Chapter by the Respondent. In this context the Respondent has the burden to  
16 prove compliance with the Chapter. Ms. Veysey, Mr. McGuire, and Bank Examiner  
17 Poulios all testified regarding an undated GFE which appeared to be signed by  
18 Ms. Knecht, submitted as part of exhibit H. It is hereto attached because of  
its significance to this decision.

19 The undated GFE does not disclose the Mortgage Broker Fee. Bank  
20 Examiner Poulios' uncontraverted testimony on this topic indicates that both  
21 federal and state laws require any Mortgage Broker Fees to be disclosed at  
22 GFE stage. On further questioning Mr. Poulios stated that the Department  
23 regularly cites licensees when they fail to disclose that fee in the GFE.  
24 There was testimony regarding the uncertainty of the amount of the Mortgage  
25 Broker Fee at the time of GFE disclosure when it is received as a Yield  
Spread Premium from the lender. Mr. Poulios testified that for that reason  
both federal law and state law allowed a range to be used. He further

1 testified that both a percent and dollar range are typically disclosed to the  
2 borrower. Ms. Veysey admitted in response to my questions that the GFE signed  
3 by Ms. Knecht could reasonably be read to mean that Capital Quest would not  
4 receive any compensation as a result of their efforts on behalf of Ms.  
5 Knecht.

6 The initial GFE is an integral and important part of the process of  
7 shopping for a mortgage loan, which arguably is why it is mandated by federal  
8 and state law and tightly controlled and regulated. A material omission from  
9 the GFE could wrongfully influence an applicant for a mortgage loan to favor  
10 one broker over another who has faithfully disclosed all fees.

11 Attorney Lapointe, on behalf of Respondents, argued that any harm that  
12 may have occurred as a result of the omission on the undated GFE was cured by  
13 the subsequent re-disclosure of a GFE that included the Mortgage Broker Fee  
14 which shows a preparation date of October 6, 2006. The testimony on this  
15 alleged disclosure of the October 6 GFE was conflicting, with the loan  
16 officer testifying that it was mailed immediately after its preparation and  
17 Ms. Knecht denying having ever received it. Ms. Knecht's testimony was clear  
18 that she never received any GFE until closing. The only GFE acknowledged by  
19 the Complainant does not disclose the Mortgage Broker Fee. Given the  
20 testimony on this issue and the undisputed facts, I make a finding of fact  
21 that the October 6 GFE was not provided to the Complainant. I decline to  
22 rule, therefore, that this alleged re-disclosure cured the violation of the  
23 Chapter that had already occurred. It is fair to conclude in this case that  
24 the omission was one of negligence rather than intent given the testimony of  
25 the parties which included statements about the loan officer's relative  
inexperience.

26 RSA 397-A:16 sets forth that mortgage brokers may only charge fees and  
27 points for services when a written disclosure stating the estimated purpose  
28 of all fees and expenses is issued within three days of the receipt of a loan

1 application. It is uncontraverted that the undated GFE, the only one  
2 acknowledged by the borrower, does not disclose a Mortgage Broker Fee of  
3 \$2,198.63.

4 I therefore make a ruling of law that Respondent violated RSA 397-A:16  
5 when it collected the Mortgage Broker Fee after having failed to disclose the  
6 fee within three business days of application. I further find and make a  
7 ruling of law that the proper restitution in this case is a refund of that  
8 fee to the borrower.

9 I therefore submit the attached proposed order for the Commissioner's  
10 approval, disapproval or modification.

11  
12 Respectfully submitted,

13                     /S/                      
14 James Shepard, Esq.  
15 Presiding Officer  
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1 State of New Hampshire Banking Department

2  
3 In re the Matter of: ) Case No.: 07-068  
4 State of New Hampshire Banking )  
5 Department, ) ORDER of the Commissioner  
6 and )  
7 Debbie A. Knecht )  
8 Complainant, )  
9 and )  
10 Capital Quest Financial Services,  
11 Inc,  
12 Respondent

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13  
14  
15 ORDER

16 The Recommended Decision by the Presiding Officer is hereby adopted and I  
17 hereby ORDER the Respondent:

- 18 1. To pay \$2,198.63 to Complainant immediately upon receipt of this  
19 order; and  
20 2. To furnish evidence of such payment to the Department; and  
21 3. To hold a mandatory training class for its loan officers regarding  
22 the requirements regarding Good Faith Estimates under both Federal  
23 and State law; such training to be held within 30 days of this order  
24 and the curriculum for said training to be submitted to the  
25 Presiding Officer for approval at least one week prior to the  
training; and

4. That a fine of \$1,500 for violation of Chapter 397-A is issued, but suspended on the condition of compliance with the earlier provisions of this Order and on no further violations of the Chapter for one year.

/S/  
Peter C. Hildreth  
Commissioner  
State of New Hampshire  
Banking Department

5/23/07  
Date



GOOD FAITH ESTIMATE OF SETTLEMENT CHARGES

DATE: \_\_\_\_\_  
BORROWER: \_\_\_\_\_  
CO-BORROWER: \_\_\_\_\_  
MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

BASED ON THE FOLLOWING ASSUMPTIONS:

LOAN AMOUNT: \_\_\_\_\_  
PURCHASE PRICE: \_\_\_\_\_  
RATE: \_\_\_\_\_  
TERM: \_\_\_\_\_

This Good Faith Estimate is being provided by **CAPITAL QUEST FINANCIAL SERVICES, INC.**, a mortgage broker, and no lender has been obtained.

The information provided below reflects estimates which you are likely to incur at the settlement of your loan. The fees listed are estimates – the actual charges may be more or less. Your transaction may not involve a fee for every item listed. The numbers listed beside the estimates generally correspond to the numbered lines contained in the HUD-1 or HUD-1A Settlement Statement which you will be receiving at settlement. The HUD-1 or HUD-1A Settlement Statement will show you the actual cost for items paid at settlement.

These estimates are provided pursuant to the Real Estate Settlement Procedure Act of 1974, as amended (RESPA). Additional information can be found in the HUD Special Information Booklet, which is to be provided to you by your mortgage broker or lender.

The undersigned acknowledges receipt of the booklet "Settlement Costs," and the Consumer Handbook on ARM Mortgages, if applicable.

801 Loan Origination Fee	_____
802 Loan Discount Points	_____
803 Appraisal Fee	<u>325.00</u>
804 Credit Report Fee	<u>18.00</u>
806 Delivery Fee	<u>45.00</u>
807 Flood Certification Fee	<u>24.00</u>
808 Mortgage Broker Fee	_____
809 Tax Service Fee	<u>79.00</u>
810 Processing Fee	<u>300.00</u>
811 Underwriting Fee	<u>425.00</u>
901 Prepaid Interest (30 days)	_____
1101 Settlement or Closing Fee	<u>500.00</u>
1108 Title Insurance (\$3.50 per thousand)	_____
1201 Recording Fee	<u>70.00</u>
1203 State Tax Stamps (7.50 per thousand)	_____
1001 Hazard or Homeowners Insurance Escrow (3mths)	_____
1002 Mortgage Insurance (PMI) Escrow (2 mths)	_____
1004 Property Taxes Escrow (6 mths)	_____

Estimate Prepaid Items/Escrow: \_\_\_\_\_  
Estimated Closing Costs: \_\_\_\_\_

Total Estimated Costs/Prepays: \_\_\_\_\_

Borrower

\_\_\_\_\_  
Co-Borrower